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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 848 OF 2018
IN
SUIT NO. 455 OF 2017**

Kavassery Anantha Krissshnan Vishwanathan & Ors	...Applicants
<i>In the matter between</i>	
Zeenat S Kasam	...Plaintiff
<i>Versus</i>	
Munis A Battliwala & Ors	...Defendants

**Mr Rajendra Sarankar, with Mr Anand Pai, i/b Durgesh Kulkarni,
for the Plaintiff.**
**Mr Shailesh Shah, Senior Advocate, with Mr Nilesh Gala, i/b Law
Square, for the Applicants (Tenants).**
**Mr Zubin Behramkamdin, with Mr Arun Panicker, i/b Nitin Parkhe,
for Defendants Nos. 1 to 5.**

**CORAM: G.S. PATEL, J
DATED: 14th June 2018**

PC:-

1. By consent the Motion is taken up for hearing and final disposal. The Motion is filed by 13 tenants of a building known as Kulsum Mahal, originally a ground and two upper floor structure with an open terrace at Survey Nos. 139, Hissa No.22, CTS Nos.

5713, 5717 and 5709 to 5712 and 5718, admeasuring about 655.21 *sq mtrs*, at Kolekalyan village, Taluka Andheri, Kalina Kurla Main Road, Santacruz (East), Mumbai 400 029, in H/East Ward.

2. The application by the tenants is this: The building, one that is 55 years old, is extremely dilapidated and in a ruinous condition. There is a structural audit report of Mr Rushabah Surendra Karnavat, a Consulting Civil Engineer and Licensed Structural Engineer, Exhibit “E” that recommends the demolition and reconstruction of the entire building. There are also photographs of the present condition of the building annexed to this report and these I think make the matter plain that there is extensive structural distress. If there was any doubt about this, it is put to rest by the fact that admittedly the MCGM has issued notices under Section 488 of the Mumbai Municipal Corporation Act on 11th June 2018 and a further notice under Section 354 of the MMC Act on 13th June 2018 directing the owners and all occupiers to vacate the structure and to have it pulled down since it poses an imminent threat.

3. The Plaintiff and Defendants Nos. 1 to 4 are apparently co-owners as heirs of the property. The 5th Defendant is the mother who has a life interest. According to Defendants Nos. 1 to 4, represented by Mr Behramkamdin, the Plaintiff has at best an undivided 20% right, title and interest in the property even under the Will that she herself propounds. It seems that there was an Memorandum of Understanding (“**MoU**”) of October 2015 (the exact date was not stated on the document) with the 14th Applicant, M/s Supreme Realtors, for redevelopment of this building. That

proposal has been stalled because of the disputes between the owners, i.e., the Plaintiff and Defendants Nos. 1 to 4.

4. The anxiety on the part of the Plaintiff is that the Defendants might enter into an agreement with some other developer or builder on different terms. That is not possible because the Defendants have instructed Mr Behramkamdin to state that they stand by the MoU dated October 2015 with M/s Supreme Realtors. This is a redevelopment agreement that is also accepted by the Applicants who are tenants/occupants. There is therefore no question of these tenants or occupants opposing the appointment of the 14th Applicant who has in fact joined in the application.

5. Thus it appears that none of the parties to the application have any objection to (i) the redevelopment of the structure; and (ii) the redevelopment by M/s Supreme Realtors on the terms and conditions set out in the October 2015 agreement. All are also unanimous and agreed that the structure does in fact require redevelopment.

6. Last, it is necessary to note that a redevelopment of this kind can only benefit the parties to the Suit. No prejudice is caused to the Plaintiff or to any of the Defendants if the application is allowed. On the other hand, refusing to grant relief puts the Applicants at considerable risk and there is, in addition, the quite considerable risk to the general public and this risk is *inter alia* evident from the MCGM notices. Thus there is not only a *prima facie* case made out

but the balance of convenience completely favours the grant of relief as sought.

7. In this view of the matter the Motion is made absolute in terms of prayer clause (a) and (b) which reads thus:

- (a) That this Hon'ble Court be pleased to permit the Applicants and those willing parties to the above Suit to proceed with redevelopment of the Suit Property being building known as "Kulsum Mahal" originally consisting of Ground plus two upper floors, with open terrace standing on all that piece or parcel of land bearing Survey No. 139, Hissa No.22, corresponding CTS Nos. 5713, 5717 and 5709 to 5712, 5718, admeasuring about 655.21 sq mtrs, situate, lying and being at Lolekalyan-Village, Taluka-Andheri, Kalina Kurla Main Road, Santacruz (East), Mumbai 400 029, in the Registration Sub-District of Mumbai Suburban of "H East" Ward, MCGM, more particularly described at Exhibit 'C' at to the plaint, on such terms and conditions as this Hon'ble Court deems fit and proper;
- (b) That this Hon'ble Court be pleased to permit the Plaintiff and the Defendants abovenamed or such other persons as this Hon'ble Court deems fit and proper to appear before the concerned sub-register of assurances for the purpose of executing and registering Development Agreement and to admit execution thereof in favour of the Applicant No.14.

8. It is necessary to clarify that this order is entirely without prejudice to all rights and contentions as between the Plaintiff and the Defendants. All those contentions are expressly left open. All

other applications in the Suit as between the Plaintiff and the Defendants will be heard and decided on their merits.

9. All signatories to the MoU agree and undertake to this Court to abide by the terms and conditions of the MoU. This understanding is accepted as an undertaking to the Court.

10. The Plaintiff and the Defendants agree that they will execute all necessary documents including an appropriate Power of Attorney in favour of the 14th Applicant, M/s Supreme Realtors to give effect to the MoU of October 2015.

11. The Notice of Motion is disposed of in these terms with no order as to costs.

(G. S. PATEL, J)